



MAR 29 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Keith G. Haddaway
Venable
PO Box 34385
Washington, DC 20043-9998

In re Application of
MEARS et al.
Application No.: 09/763,089
PCT No.: PCT/US99/18738
Int. Filing Date: 18 August 1999
Priority Date: 18 August 1998
Attorney Docket No.: 29925-152086
For: APPLICATOR AND DISPENSING
DEVICE USING SAME

NOTIFICATION

This notification is in response to applicants' submission filed 18 January 2002 in response to the Notification dated 18 December 2001. The submission was accompanied by four declarations of inventors.

BACKGROUND

On 18 August 1999, applicants filed international application PCT/US99/18738, which claimed a priority date of 18 August 1998. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 02 March 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 17 March 2000, within nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 20 February 2001 (18 February 2001 being a Sunday and 19 February 2001 being a legal public holiday).

On 16 February 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, a first declaration of inventors identifying Harvey Levine and Lawrence Levine as the inventors and a second declaration of inventors identifying Christopher Mears and Richard F. Gray as inventors.

On 15 March 2001, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that the oath or declaration submitted on 16 February 2001 was defective because the inventors were not identified.

On 15 June 2001, applicants submitted a response to the NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371. The response was accompanied by, *inter alia*, copies of two NOTIFICATION OF THE RECORDING OF A CHANGE (Form PCT/IB/306) from the International Bureau, a first page of a declaration identifying Christopher Mears and Richard Gray as inventors and signed by Christopher Mears, another first page of a declaration identifying Christopher Mears and Richard Gray as inventors and signed by Richard Gray, and a second page of a declaration identifying Ralf Zissel, Harvey Levine, and Lawrence Levine as inventors and signed by Ralf Zissel.

On 03 July 2001, the USPTO mailed a NOTIFICATION OF A DEFECTIVE RESPONSE indicating that the response filed by applicants on 15 June 2001 did not complete the requirements set forth in the NOTIFICATION OF MISSING REQUIREMENTS mailed 15 March 2001.

On 20 July 2001, applicants submitted a "RESPONSE TO NOTIFICATION OF A DEFECTIVE RESPONSE" indicating that a supplemental response had been filed on 02 July 2001. The submission filed 20 July 2001 also included a second page of a Declaration signed by Harvey Levine and Lawrence Levine.

On 18 December 2001, the USPTO mailed a NOTIFICATION requiring an oath or declaration in compliance with 37 CFR 1.497(a)-(b) within a one-month extendable time period. The Notification indicated that each executed declaration must identify all of the inventors and each submitted declaration must be complete, even if executed by only one of the inventors. The Notification also indicated that the declaration signed by Mr. Zissel contained non-initialed and non-dated alterations and that the difference in the names of the inventor in the published international application (Ralph Zissel in the published international application) and the declaration signed by a Mr. Zissel (Ralf Zissel) must be explained.

On 18 January 2002, applicants submitted the instant submission which was accompanied by, *inter alia*, four declarations of inventors.

DISCUSSION

The declarations signed by Harvey Levine and Lawrence Levine and the declaration signed by Ralf Zissel are improper. In each of these declarations, page 1 appears to be an original sheet while page 2 appears to have been transmitted by facsimile. This suggests that the first page of the declaration was not associated with the second page at the time of execution, thus rendering the execution improper. The submission filed 18 January 2002 acknowledges that "some of the inventors returned signed copies by facsimile transmission that included only the page with the individual's signature, although the entire declaration is included herewith." However, the submission goes on to state that "Undersigned counsel represents that each and every inventor was in possession of and executed a complete copy of the declaration."

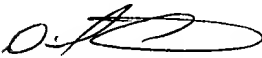
Nevertheless, a complete declaration which has been presented to and signed by the relevant inventors must be provided. A copy of the signature page with copies of other pages of the declaration taken from a different copy attached to the signature page is not sufficient.

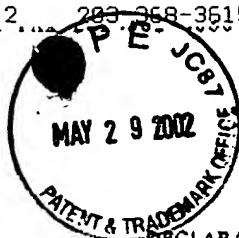
The difference in the names of the inventor in the published international application (Ralph Zissel in the published international application) and the declaration signed by Mr. Zissel (Ralf Zissel) has been adequately explained.

CONCLUSION

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of this letter marked to the attention of the Office of PCT Legal Administration.

Since the reply filed 20 July 2001 appears to have been bona fide, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS from the mailing date of this notice, whichever is longer, within which to provide an oath or declaration in compliance with 37 CFR 1.497(a)-(b). Extensions of this time period may be granted under 37 CFR 1.136(a). Failure to timely file a proper reply will result in abandonment of the application.


Daniel Stemmer
PCT Legal Examiner
PCT Legal Affairs
Office of Patent Cooperation Treaty
Legal Administration
Telephone: (703) 308-2066
Facsimile: (703) 308-6459



Attorney Docket 22925-169801

DECLARATION FOR UNITED STATES PATENT APPLICATION.
POWER OF ATTORNEY, DESIGNATION OF CORRESPONDENCE ADDRESS

As a below named inventor, I hereby declare that my residence, post office address and citizenship are as stated below next to my name, and that I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled APPLICATOR AND DISPENSING DEVICE USING SAME, the specification of which

[X] was filed on February 16, 2001 as Application No. 02/63,089 and as a continuation application filed under the Patent Cooperation Treaty on August 18, 1999, as Application No. PCT/US99/18738, the United States of America being designated.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose to the Patent and Trademark Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, §1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, § 119 of any foreign application(s) for patent, utility model, design or inventor's certificate listed below and have also identified below any foreign application(s) for patent, utility model, design or inventor's certificate having a filing date before that of the application(s) on which priority is claimed:

Prior Foreign Application(s)Priority Claimed

I hereby appoint the registered attorneys and agents of VENABLE associated with the following customer number to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith:



26694

PATENT TRADEMARK OFFICE

VENABLE is located at Suite 1000, 1201 New York Avenue, N.W., Washington, D.C. 20005-3917, Telephone: (202) 962-4800, Telefax: (202) 962-8300. Address all correspondence to VENABLE, Post Office Box 34385, Washington, D.C. 20043-9998.

The undersigned hereby authorizes the U.S. attorneys and agents named herein to accept and follow instructions from the undersigned's assignee, if any, and/or, if the undersigned is not a resident of the United States, the undersigned's domestic attorney, patent attorney or patent agent, as to any action to be taken in the Patent and Trademark Office regarding this application without direct communication between the U.S. attorneys and the undersigned. In the event of a change in the person(s) from whom instructions may be taken, the U.S. attorneys or agents named herein will be so notified by the undersigned.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Signature: _____

Joint Inventor: Christopher MEARS

Citizenship: USA

Residence and Post Office Address: 200 West 81st Street, Apt. 32
New York, NY 10024

Date: _____, 200_.

Signature: _____

Joint Inventor: Richard GRAY

Citizenship: USA

Residence and Post Office Address: 150 Central Park South, Suite 3210
New York, NY 10019

Date: _____, 200_.



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DECLARATION FOR UNITED STATES PATENT APPLICATION
POWER OF ATTORNEY, DESIGNATION OF CORRESPONDENCE ADDRESS

Signature: *Ralph Zissel* Date: JAN. 18, 2002
Joint Inventor: German Ralph Zissel
Citizenship: USA 1/18/02
Residence and Post Office Address: 107 Hollyhock Lane
Moorestville, NC 28117 NC

Signature: _____ Date: _____, 200_
Joint Inventor: Harvey LEVINE
Citizenship: USA
Residence and Post Office Address: 255 Woodside Circle
Fairfield, CT 06432

Signature: _____ Date: _____, 200_
Joint Inventor: Lawrence LEVINE
Citizenship: USA
Residence and Post Office Address: 3 Austin Drive
Easton, CT 06612

#288785

Attorney Docket: 29925-169801

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DECLARATION FOR UNITED STATES PATENT APPLICATION
POWER OF ATTORNEY, DESIGNATION OF CORRESPONDENCE ADDRESS

Signature: _____ Date: _____, 200_

Joint Inventor: Ralph Zissel

Citizenship: USA

Residence and Post Office Address: 107 Hollybuck Lane
Mooresville, NC 28117Signature: [Signature] Date: 4-28, 2002

Joint Inventor: Harvey LEVINE

Citizenship: USA

Residence and Post Office Address: 255 Woodside Circle CT
Fairfield, CT 06432Signature: [Signature] Date: 5-28, 2002

Joint Inventor: Lawrence I. BORDAC

Citizenship: USA

Residence and Post Office Address: 3 Austin Drive CT
Easton, CT 06612

#288785